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**THESE INSTRUCTIONS DO NOT APPLY TO INDEPENDENTLY PROCURED  
SURPLUS LINES INSURANCE  
OR  
SURPLUS LINES TRANSACTIONS WHERE MONTANA IS NOT THE HOME  
STATE**

**I. GENERAL INFORMATION**

When Montana is the home state at the time of the surplus lines insurance transaction surplus lines filings shall be made to the Montana Commissioner of Securities and Insurance, Office of the State Auditor (CSI) on CSI approved forms. There are standardized submission forms available from the department.

Submissions may be made by sending paper submissions to the department or electronically filing submissions via the surplus lines business portal via the department's web site.

Producing insurance producers and surplus lines producers may create and retain electronic records to meet the records retention requirements in 33-2-310 MCA provided that the electronic records are; archival in nature, such as a scanned copy, so as to preclude the alteration of the record after it is initially stored in the electronic medium; and capable of duplication to a paper copy that is as legible as the original.

**II. TERMINOLOGY AND PROCEDURE**

1. Premium Components
  - a. Base Premium – means the charge for the insurance coverage, including any moneyed endorsement, but excluding any separately payable inspection fee. The stamping fee is calculated and imposed on the base premium
  - b. Total Premium -- means the base premium plus any separately stated inspection fee (excluding the stamping fee and taxes). The premium tax is calculated and imposed on the total premium except as outlined below in
  - c. Fire Premium
    1. That portion of the premium that pertains to the fire coverage only.
    2. The fire and pension taxes apply to the fire premium only.
    3. If the fire premium cannot be identified separately, use 60% of the property premium to calculate the fire premium. This rule applies if the policy includes V&MM and/or Theft; however, if these coverage's are

excluded, then "Fire Only" must be indicated on the declarations page and the entire premium then would then be subject to the 2.5% fire tax.

4. If the property premium is not identified use 60% of the whole premium to find the fire premium.

d. Inspection Fee

1. Can only be charged to the policyholder for the actual expense of the inspection unless included in the premium as an operating expense.
2. The premium tax would apply if the inspection fee is charged directly to the policyholder, either by a separate charge, or if included in the premium. (If the Inspection fee is charged separately, then calculate as follows: Premium + Inspection Fee x 2.75% = Premium Tax.)
3. Any inspection fee included in the base premium is subject to the stamping fee.
4. Inspection fee is included in the definition of "total premium."

2. Premium Tax (2.75%)

Montana imposes a 2.75% premium tax which is calculated on the total premium.

3. Fire Tax (2.5%)

Applies only to the fire premium portion of the policy in which fire coverage premium is being charged. (See: Section II, Subsection B)

4. Stamping Fee

- a. A stamping fee will be calculated on the base premium, including any monied endorsement.
  - i) Effective January 1, 2012 the stamping fee is:
    - A) one quarter percent (1/4%) of the base premium for paper (hard copy submissions; and
    - B) no charge for electronically filed submissions via the surplus lines business portal via the department's web site.
- b. Any inspection fee included within the base premium does not qualify for the exemption and is subject to the stamping fee.
- c. Stamping fees are fully earned unless the policy is canceled flat with no coverage afforded or, if the company incorrectly calculates the premium, thus returning improper premium and stamping fee.

5. Producer Annual Statement

By March 2 of each year the CSI will provide each surplus lines producer with a detailed statement listing all filings made by that surplus lines producer during the previous calendar year. This statement will also show the stamping fees generated during the calendar year and owed to the State of Montana.

6. Diligent Effort

The term Diligent Effort, unless the insured is an exempt commercial purchaser, means that the producing producer has attempted to place the business with a minimum of three insurers authorized and actually transacting that line of business in Montana. If fewer than three insurers are authorized and actually transacting the line of business in Montana, diligent effort must be met by searching this lesser market (Per MCA 33-2-302). The producing insurance producer, or the surplus lines insurance producer if one and the same, must make a diligent effort to place the business in the admitted market and complete the Montana Surplus Lines Submission Form. The producing insurance producer must hold a resident or non-resident agents license with State of Montana

#### 7. Submission Form affirmation

The producing insurance producer must affirm to the following:

- 1) that the insurance which is the subject of this affidavit is in accordance with Title 33, Section 33-2-301 et seq., MCA, the Surplus Lines Insurance Law of the State of Montana. The insurance which is the subject of this affidavit was not procured for:
  - a) The purpose of securing advantages as to the terms of the insurance contract and;
  - b) the purpose of obtaining a lower premium rate than would be accepted by the authorized insurer except as provided in MCA 33-2-302 (2) (a) (iii) (A) and (b).

Furthermore:

- 2) The insurance which is the subject of this affidavit is a line of insurance which appears on the most recent Approved Risk List (ARL) issued by the Commissioner of Insurance; or
- 3) Immediately before requesting from an unauthorized insurer the insurance which is the subject of this affidavit, I endeavored diligently and unsuccessfully to secure equivalent coverage from authorized insurers holding certificates of authority to transact this line or the full amount of the line of insurance in the State of Montana and;
- 4) I have expressly advised the insured prior to placing the insurance that the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

#### 8. Surplus Lines Trust Account

The Surplus Lines Producer is responsible for maintaining in his/her trust account taxes on all surplus lines business. Annual statements will be generated by the Stamping Office and mailed to the surplus lines producers prior to March 1 of each year. The surplus lines producers will be responsible for reviewing their annual statement for accuracy and submitting the premium tax and stamping fee payments, with a copy of the annual statement to the CSI no later than April 1 of each year. **There is a \$25.00 a day late penalty on taxes not sent in by April 1st.**

## 9. Completion Montana Surplus Lines Submission Form

The Surplus Lines Producer is responsible for the completion and filing of the Montana Surplus Lines Submission Form with the CSI. The producing insurance producer must make a diligent effort to place the business with an authorized insurer per MCA 33-2-302(2) (a) (ii) (a). This statute applies to all insurance producers, including captive agents. The surplus lines producer must also make a diligent effort to place the business with an authorized insurer as per MCA 33-2-302(2) (ii) (a) with the exception of MCA 33-2-302(2) (a) (iii) (A) and (B) (ii) (b). The submission form includes a section in which the producing insurance producer attests to their diligent efforts. The producing producer and surplus lines producer sections are independent of each other and must be completed by each producer. Effective July 1 2005 there is an exception under MCA 33-2-302 (2) (a) (iii) (A) and (B) (ii) (b). You must affirm that: you have provided the insured with the disclosure information on the form approved by the Commissioner, the unauthorized market quote was placed with a surplus lines company that is eligible under MCA33-2-307, the authorized market quote(s) that were used were the lowest premium from the diligent effort and the difference between the authorized market quote(s) and the unauthorized market quote(s) meet both the 10% AND the \$1500 requirements.

## 10. Producing Insurance Producer

- a. Must hold a resident or non-resident license with the Montana Insurance Department.
- b. Sells and services the surplus lines business for the policyholder.
- c. Must obtain surplus lines coverage through a licensed Montana surplus lines producer, or be licensed as a Montana Surplus Lines producer. The producing insurance producer must make a diligent effort to place the business with an authorized insurer per MCA 33-2-302(2) (a) (ii) (A). This statute applies to all insurance producers, including captive agents. The surplus lines producer must also make a diligent effort to place the business with an authorized insurer as per MCA 33-2-302(2) (a) (ii) (A). The submission form includes a section in which producing insurance producer attests to their diligent efforts and is signed by surplus lines producer. The producing producer section is independent of surplus lines producer section.

## 11. Approved Risk List (ARL)

Under Administrative Rule, 6.6.2809 (4), risks appearing on the ARL are hard-to-place risks that may not be obtainable from authorized insurers. These risks do not require the completion of Part 1, Sections 1-4, of the Montana surplus lines submission form in regard to the licensed surplus lines insurance producer's diligent effort. However, a diligent effort to review the authorized market is still encouraged as per MCA 33-2-302.

## 12. Montana Surplus Lines Submission Form

- a. Producing Insurance Producer fills out Part 1 of the submission form.

- b. Should both the producing insurance producer and surplus lines producer be the same individual, it is appropriate for that individual to complete the entire submission form signing Parts 1 and Part 2.
- c. Surplus Lines Producer fills out Parts 2 & 3 of the submission form upon receiving the submission form back from the producing insurance producer.

### III. **FILING SURPLUS LINES TRANSACTIONS WITH THE CSI**

There are standardized submission forms available from the CSI. Submissions may be made by sending paper submission to the CSI or electronically filing submissions via the surplus lines business portal via the CSI website.

#### 1. Montana Surplus Lines Submission Form

- a. Affidavit of Producing Insurance Producer Section - Part 1 of the submission form. The Producing Insurance Producer completes signs and has notarized Part 1 of the submission form, then sends the form back to the surplus lines producer; or complete Parts 2 if he/she holds a Montana surplus lines license. One copy of the submission form is retained by the producing insurance producer along with documentation of their diligent.
- b. Upon receiving the submission form from the resident or non-resident producing insurance producer, the surplus lines producer shall check for accuracy regarding:
  - 1) Line of coverage on current Approved Risk List (ARL) or specific explanation why the risk is placed in the surplus lines market.
  - 2) Insurer / company is on Surplus Lines Eligible List.
  - 3) Resident or non-resident producing insurance producer is licensed to conduct business in Montana.
  - 4) If question (3) is marked "YES", verify that it complies with the requirements set forth by MCA33-2-302.
- c. Surplus Lines Producer Section - Part 2 of the submission form:
  - 1) Surplus Lines Producer completes and signs the submission form upon receipt from resident or non-resident producing insurance producer.
  - 2) Surplus Lines Producer is responsible for the completeness and accuracy of the submission form.
- d. Submit the original submission form to the CSI.
- e. One copy of the submission form is retained by the surplus lines producer.

#### 2. Policy Declarations Page and/or Moneyed Endorsements/Cancellations

- a. If coverage is procured through a surplus lines insurance producer, that surplus lines insurance producer shall stamp or notate each insurance contract, cover note, declarations page, certificate of insurance or binder with the following completed statement per MCA 33-2-303 and ARM 6.6.2803 (6):

NOTICE: This coverage is issued by an unauthorized insurer that is an eligible surplus lines insurer. If this insurer becomes insolvent, there is no coverage by the Montana Insurance Guaranty Association under the Montana Insurance Guaranty Association Act.

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Printed Name of Surplus Lines Insurance Producer    Montana License #

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Signature of Surplus Lines Insurance Producer

**BREAKDOWN OF MT SURPLUS LINES TAX**

Inspection Fee\_\_\_\_\_

Premium Tax\_\_\_\_\_

Fire Tax\_\_\_\_\_

Stamping Fee\_\_\_\_\_

- b. A copy of all documents must be submitted to the CSI. All incomplete surplus lines submission will be returned to the surplus lines producer for proper completion.
- c. The submission form must accompany the renewal or new business declarations only. Subsequent moneyed endorsements sent to the CSI should have a cover note attached. Endorsement / Cancellation cover notes can be found on our website at:

<http://www.csi.mt.gov/SurplusLines/index.asp>

**3. MCA 33-2-308, and ARM 6.6.2804 requirements**

- a. Pursuant to 33-208, MCA and ARM 6.6.2804, the premium, tax, inspection fee and stamping fee must clearly be shown on the declarations page, moneyed endorsements and cancellations. The approved tax breakdown stamp or label must be used to record applicable tax (as) and fee(s) on the policy and subsequent endorsements and cancellations. If the information was not generated on the endorsement, a cover note, which can be found on our web site at:

<http://www.csi.mt.gov/SurplusLines/index.asp>

and should be attached to all cancellations and/or endorsements. The cover note must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

- b. Stamping Fees are fully earned, except on Flat Cancellations or when the insurance company erred in calculating the premium.

**4. Types of Policies**

- a. For policies which are continuous and where the renewals are made by endorsements, submission forms are required on each anniversary date.
- b. For fire policies written for a term of less than one year, and then renewed in one to three-month intervals, the following be required:
  - i) When the policy is written as “new business”, a submission form must be properly filed with the Stamping Office.
  - ii) Any short-term “renewals” of this policy that occur within the next twelve month period from the original inception date will be filed with the CSI Office as if they were endorsements.
  - iii) The first renewal occurring after the end of this twelve-month period will need to be filed with the CSI including a new submission form and declaration page. The diligent effort has to be completed for each year that the policy is renewed.
  - iv) If a policy is a multi year policy with an annual premium, the surplus lines agent must use the submission form for the initial year of the policy and submit the subsequent year’s policy premium on the Multi Year Policy Premium Submission form. The Multi Year Policy Submission form is not be used for the renewal of a policy. As a reminder the submission form must accompany all renewal or new business declarations.

#### 5. Time Frames for Surplus Lines Submissions

- a. Submissions are to be sent to the CSI within 60 calendar days of the effective date of the policy.
- b. Binders are required to be sent to the CSI in accordance with MCA 33-15-411,, (see copy of statute—last page of Montana Insurance Code Section of this manual) should the policy not be received by the surplus lines producer within the time frame mentioned above. The binders shall indicate the effective date of coverage, total premium, fire premium, taxes and stamping fee breakdowns, amount, type of coverage, and the insurance company name.
- c. When filing on a binder it is required that the declaration page be submitted, when received, to the CSI with a cover note stating the policy was previously filed on a binder.

#### 6. Membership in Montana Surplus Lines Association

All resident or non-resident Montana Surplus Lines license holders are encouraged to join and voluntarily pay a \$60 annual membership fee to support the Montana Surplus Lines Association.

## DEFINITIONS & FORMS

### Calculating Montana Surplus Lines Tax

1. Policy Premium is the premium paid by the policyholder for the policy.
2. Fire Premium is the actual fire premium associated with the policy or 60% of the property and/or inland marine portion of the policy.
3. Inspection Fee's are allowed in Montana for the actual cost of inspection and are subject to premium tax. Inspection fees that are considered part of the policy premium are subject to the stamping fee. Inspection fees that are billed or paid separately from the policy premium are not subject to the stamping fee.  
\*\*\*Note: Policy Fee's Are Not Allowed In Montana. \*\*\*
4. Premium Tax is calculated by multiplying the Total Policy Premium plus the Inspection Fee (if any) by .0275 or 2 ¾%.
5. Fire Tax is calculated by multiplying the Fire Premium (see line 2) by .025 or 2.5%.
6. Stamping Fee is calculated by multiplying the Policy Premium Only (see line 1) by .0.0% for electronic filings or 0.025% for policies sent to the CSI.

Sample Policy:	General Liability	\$500.00
	Property	<u>\$500.00</u>
	Total Policy Premium	\$1,000.00
	Inspection Fee	\$ 25.00

Premium tax equals \$28.19 (\$1,000 plus \$25 multiplied by 0.0275)

Stamping fee equals \$0.00 (\$1,000 multiplied by 0.00 if filed electronically) or \$2.50 if the policy is sent to the CSI as a paper filing \$1,000 multiplied by 0.0025)

Fire tax \* equals \$12.50 (\$500 multiplied by 0.025)

\*(If actual fire premium is not available, multiply the \$500.00 property portion of policy by 60% to arrive at the \$300.00 fire premium, which equals \$7.50. If fire premium is known, as in the example, multiply the known fire premium amount (\$500) by 0.025)

**Send no money with the Montana Surplus Lines Submission Form. You will be billed for the premium tax and stamping fees on an annual basis.**

**The Annual Surplus Lines Tax and Fee Statement for each agent will be available on March 2 and must be electronically downloaded from the CSI Website. Each statement will include all applicable surplus lines taxes and stamping fees owed by the agent. The agent will attach a payment voucher, obtained from the CSI website, to a check payable to the Commissioner of Securities and Insurance by April 1<sup>st</sup>.**

**If the agent notes errors on the Tax and Fee Statement, please contact the CSI to correct the statement prior to payment of taxes. Late fees will not apply to incorrect statements, with proper notification to the CSI.**